

Madhya Pradesh High Court

Siyaram Rathore vs The State Of Madhya Pradesh on 5 May, 2022

Author: Gurpal Singh Ahluwalia

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THE HIGH COURT OF MADHYA PRADESH

Criminal Revision No.796 of 2022

Siyaram Rathore and another Vs. State of M.P. and another

Gwalior, Dated:05/05/2022

Shri Ayush Saxena, Advocate for applicants.

Shri A.K. Nirankari, Public Prosecutor for respondent

no.1/State.

Shri Rajkumar Gatwar, Advocate for respondent no.2. This Criminal Revision under Section 397/401 of Cr.P.C. has been filed against the order dated 17/2/2022 passed by First Additional Sessions Judge, Sabalgarh, District Morena in ST No.32/2022, by which the charge under Section 306 of IPC has been framed.

2. The necessary facts for disposal of the present revision in short are that on 6/1/2022 the deceased Lokendra aged about 17 years committed suicide by hanging himself and accordingly, an information was given to the police by Purshottam. The dead body was sent for postmortem and the cause of death was asphyxia due to hanging and it was found to be suicidal. The marginal statement of the witnesses were recorded and accordingly, FIR was lodged. After recording the statements of the witnesses, the police filed the charge- sheet. By the impugned order, the Trial Court framed the charge under Section 306 of IPC.

3. It is submitted that the only allegation against the applicants is that on 6/1/2022 at about 7 AM, the applicants had threatened the THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.796 of 2022 Siyaram Rathore and another Vs. State of M.P. and another deceased Lokendra by scolding that "in case if he is seen in the village, then he would be cut in pieces and his dead body would be thrown in the river and his parents will also be killed". It was alleged that the deceased got frightened and accordingly, he went towards the well of Banke Gond. Beedha S/o Parmar scolded the applicants as to why they were threatening his nephew, then he too was abused and was suggested to keep his nephew properly because his nephew is behaving improperly (Aaj Kal Jyada Ud Raha Hai). Thereafter, Beedha went to answer the call of nature. When he came back, then his niece came running and informed that Lokendra has committed suicide by hanging. It is submitted that the entire prosecution case is that the deceased Lokendra committed suicide because of threatening given by the applicants. It is submitted that by no stretch of imagination it can be said that the applicants had ever abetted or instigated the deceased to commit suicide. No offence under Section 306 of IPC would be made out. To buttress his contentions, the counsel for the applicants has relied upon the judgments passed by the Supreme Court in the case of Sanju alias Sanjay Singh Sengar Vs. State of M.P. reported in 2002 SCC (Cri.) 1141, Ramesh Kumar Vs. State of Chhattisgarh reported in 2002 SCC (Cri.) 1088, State of West Bengal Vs. Orilal Jaiswal and another reported in

(1994) 1 SCC 73, Amalendu Pal alias Jhantu Vs. State THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.796 of 2022 Siyaram Rathore and another Vs. State of M.P. and another of West Bengal reported in (2010) 1 SCC (Cri.) 896.

4. Per contra, the application is vehemently opposed by the counsel for the State as well as the complainant. It is submitted that it is not only the case of threatening the deceased, but they were also seen near the place of incident.

5. However, it is fairly conceded that since no charge under Section 302 of IPC has been framed, therefore, the question of last seen together is of no importance. It is fairly conceded that the prosecution has not come up with the background for threatening the deceased.

6. Heard learned counsel for the parties.

7. Before considering as to whether the allegations made against the applicants would amount to abetment of suicide or not, this Court would like to consider the law governing the field in question.

8. Section 306 of I.P.C. reads as under :-

"306. Abetment of suicide. --If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

9. "Abetment" is defined under Section 107 of I.P.C. which reads as under :-

"107. Abetment of a thing.--A person abets the doing of THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.796 of 2022 Siyaram Rathore and another Vs. State of M.P. and another a thing, who--

First.--Instigates any person to do that thing; or Secondly.--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.--Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.--A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Illustration A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. Explanation 2.--Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid

the doing of that act."

10. The Supreme Court in the case of Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi) reported in (2009) 16 SCC 605, while dealing with the term "instigation", held as under :-

THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.796 of 2022 Siyaram Rathore and another Vs. State of M.P. and another "16.....instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of 'instigation', though it is not necessary that actual words must be used to that effect or what constitutes 'instigation' must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an 'instigation' may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goad' or 'urging forward'. The dictionary meaning of the word 'goad' is 'a thing that stimulates someone into action; provoke to action or reaction' ... to keep irritating or annoying somebody until he reacts...."

10.1 The Supreme Court in the case of Praveen Pradhan vs. State of Uttaranchal reported in (2012) 9 SCC 734 held as under :-

"17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh ((1991) 3 SCC 1), Surender v. State of Haryana ((2006) 12 SCC 375, Kishori Lal v. State of M.P. ((2007) 10 SCC 797) and Sonti Rama Krishna v.

Sonti Shanti Sree ((2009) 1 SCC 554)

18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.796 of 2022 Siyaram Rathore and another Vs. State of M.P. and another suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred

to under Section 228 CrPC."

10.2 The Supreme Court in the case of Sanju @ Sanjay Singh Sengar vs. State of M.P. reported in (2002) 5 SCC 371 has held as under :-

"6. Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing." Further, in para 12 of the judgment, it is held as under: "The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation."

10.3 The Supreme Court in the case of Gangula Mohan Reddy vs. State of A.P. reported in (2010) 1 SCC 750 needs mentioned here. In which Hon'ble Apex Court has held that:

"abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing - Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained - In order to convict a person under section 306 IPC, there has to be a clear mens rea to commit offence - It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide - Also, reiterated, if it appears to Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty- Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences of case, none of the ingredients of offence under Section 306 made out - Hence, appellant's conviction, held unsustainable".

10.4 In the case of State of W.B. vs. Orilal Jaiswal, reported in 1994 (1) SCC 73 , the Supreme Court has held as under:-

"This Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences

in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that that accused charged of abetting the offence of suicide should be found guilty."

10.5 The Supreme Court in the case of M. Mohan vs. State represented by the Deputy Superintendent of Police reported in THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.796 of 2022 Siyaram Rathore and another Vs. State of M.P. and another AIR 2011 SC 1238 has held as under :-

"Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature is clear that in order to convict a person under Section 306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

10.6 The Supreme Court in the case of Kishori Lal vs. State of M.P. reported in (2007) 10 SCC 797 has held in para 6 as under:-

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

10.7 In the case of Amalendu Pal @ Jhantu vs. State of West Bengal reported in (2010) 1 SCC 707, the Supreme Court has held THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.796 of 2022 Siyaram Rathore and another Vs. State of M.P. and another as under:-

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the

facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

14. The expression 'abetment' has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause 'thirdly' of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.

15. In view of the aforesaid situation and position, we have examined the provision of clause thirdly which THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.796 of 2022 Siyaram Rathore and another Vs. State of M.P. and another provides that a person would be held to have abetted the doing of a thing when he intentionally does or omits to do anything in order to aid the commission of that thing. The Act further gives an idea as to who would be intentionally aiding by any act of doing of that thing when in Explanation 2 it is provided as follows:

"Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

16. Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly alongwith explanation 1 or more particularly thirdly with Explanation 2 to Section 107 is attracted in the facts and circumstances of the present case so as to bring the present case within the purview of Section 306 IPC." 10.8 The Supreme Court in the case of Amit Kapur vs. Ramesh Chander reported in (2012) 9 SCC 460 has held as under :

"35.The learned counsel appearing for the appellant has relied upon the judgment of this Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) ((2009) 16 SCC 605 to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether the offence under these provisions has been committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word "instigate" used in Section 107 IPC has been explained by this Court in Ramesh Kumar v. State of Chhattisgarh ((2001) 9 SCC 618) to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.796 of 2022 Siyaram Rathore and another Vs. State of M.P. and another words, instigation has to be gathered from the circumstances of the case. All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence. "

11. To constitute abetment and involvement of the accused aiding or instigating the commission of suicide is imperative. Continuity, culpability as well as complicity of the omissions or actions are ingredient parts of abetment.

12. Thus, if the allegations made against the applicants are considered in the light of the above-mentioned law laid down by the Supreme Court, it is clear that the prosecution has not alleged any background for threatening the deceased. Mere giving a threat that in case if the deceased is seen in the village, then he would be cut into pieces, would not amount to abetment of suicide. There is no evidence that on previous occasions also any threat was ever given by the applicants. There is no evidence to the effect that the parents or any other family member of the deceased was ever given any threat. There is no evidence on record to show that there is any enmity between the applicants and the family members of the deceased. Thus, if certain words are uttered without any reason and background, then it cannot be said that the intention behind the said threat was to abet the commission of suicide.

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13. Under these circumstances, this Court is of the considered opinion that even if the entire allegations are accepted as true, no case for trial of the applicants under Section 306 of IPC would be made out. Accordingly, order dated 17/2/2022 passed by First Additional Sessions Judge, Sabalgarh, District Morena in ST No.32/2022 is hereby set aside. The applicants are discharged.

14. The Criminal Revision succeeds and is hereby allowed.

(G.S. Ahluwalia) Judge Arun* ARUN KUMAR MISHRA 2022.05.09 13:39:27 +05'30'